Filed 1/17/19 In re Cesar S. CA2/4
(unmodified opinion attached)

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re CEASAR S., a Person Coming Under the Juvenile Court Law.	B286712 (c/w B287268)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. BRANDON S., Defendant and Appellant.	(Los Angeles County Super. Ct. No. DK15234B) (D. Zeke Zeidler, Judge) ORDER MODIFYING OPINION [NO CHANGE IN JUDGMENT]

THE COURT:*

It is ordered that the opinion filed herein on January 4, 2019, be modified as follows:

On page 1, please add this appearance:

Law Office of Marissa Coffey and Marissa Coffey, under appointment by the Court of Appeal, for Respondents Ceasar S. and Josiah T.

There is no change in the judgment.

Filed 1/4/19 In re Ceasar S. CA2/4 (unmodified opinion)

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re CEASAR S., a Person Coming Under the Juvenile Court Law.	B286712 (c/w B287268) (Los Angeles County Super. Ct. No. DK15234B)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. BRANDON S., Defendant and Appellant.	

APPEAL from orders of the Superior Court for Los Angeles County, D. Zeke Zeidler, Judge. Affirmed.

Emery El Habiby, by appointment of the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Sarah Vesecky, Senior Deputy County Counsel, for Plaintiff and Respondent.

Brandon S. (father) appeals from orders of the juvenile court (1) granting restraining orders against him protecting the foster parents of his son, Ceasar, and the

social worker formerly assigned to the case (the CSW); (2) granting a Welfare and Institutions Code[1] section 388 petition filed by the Los Angeles Department of Children and Family Services (DCFS or the Department) and terminating his visitation with Ceasar; and (3) terminating his parental rights as to Ceasar.[2] He contends that there was insufficient evidence to support the issuance of the restraining orders. He also contends that the juvenile court abused its discretion in granting the section 388 petition because the circumstances were changing, rather than changed, and it was not in Ceasar's best interest to terminate father's visits. Finally, he contends the termination of his parental rights was improper because (1) the juvenile court failed to evaluate the paternal grandparents for placement; (2) good cause existed to continue the section 366.26 hearing to allow DCFS to assess the paternal grandparents for placement; and (3) the juvenile court erred in finding that the beneficial parental relationship exception to termination of parental rights did not apply. None of his contentions is well taken. Accordingly, we affirm the orders.

BACKGROUND

This is our second opinion in this dependency matter. Previously, father appealed from the jurisdictional and dispositional orders regarding his two sons, Josiah and Ceasar. The facts related to proceedings through the dispositional orders are quoted from our prior opinion; the remaining facts are summarized from the post-disposition record on

---

[1] Further undesignated statutory references are to the Welfare and Institutions Code.

[2] There is another child who was part of the dependency case, but father in his appellant's opening brief expressly limited his appeal to issues involving Ceasar. Although father asserted in his appellant's reply brief that his appeal was not so limited and included the other child, we conclude that he forfeited those issues, not only due to his express limitation in his opening brief, but also because he did not address the issues with respect to the other child in the opening brief. (*Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466, fn. 6 [issues not raised in the appellant's opening brief are forfeited].)

appeal. Because neither Josiah nor his and Ceasar's mother are part of the instant appeal, our discussion of facts regarding them is limited to those facts necessary to this appeal.

A. *Facts and Proceedings Through the Dispositional Order*

"[Father] is the presumed father of Cesar[3] (born in September 2015) and Josiah (born in December 2011). [Father], the children, and their mother moved to California from Ohio in April 2015.

"The family came to the attention of [DCFS] in January 2016 when the children's mother was involuntarily hospitalized . . . due to psychiatric issues. . . . [¶] During her hospitalization, mother . . . reported [father] had beaten her two or three days earlier and showed a hospital social worker bruising on her thigh, arm, and breastbone. Based on this report, DCFS commenced an investigation of the family.

"During the investigation [father] stated that police had been called to the family home three times in the month leading up to mother's hospitalization due to her screaming. He said that in the four days prior to her hospitalization, mother had been screaming at him, hallucinating, and acting depressed. He later clarified that by 'hallucinating,' he meant she was 'hallucinat[ing] about [him] cheating on her.' Prior to her hospitalization, [father] believed mother had bipolar disorder, depression, and posttraumatic stress disorder (PTSD), but he was not aware of any diagnosis from a medical professional.

"[Father] generally left the children in mother's care when he went to work. He also left them in her care when he went to smoke marijuana with his friends. [Father] stated he believed mother did not pose a danger to the children.

"During the investigation, mother told the social worker that she and [father] had used drugs in the home and that domestic violence was a recurring issue in their

---

3 We note that in many reports (and in our prior opinion) the younger child's name was spelled "Cesar." His name on his birth certificate, however, spells it "Ceasar." Except when we are quoting from reports or our prior opinion, we will use the spelling on his birth certificate.

relationship. The children's maternal grandmother told a social worker that she once witnessed [father] smoke marijuana outside his home in Ohio and go back inside under the influence when Josiah was home.

"DCFS filed a Welfare and Institutions Code section 300 [fn. omitted] petition in January 2016, making several allegations relating to [father's] conduct. First, that [father] had committed domestic violence in a manner which placed the children at substantial risk of physical harm, as defined in section 300, subdivision (a). Second, that the domestic violence committed by [father] constituted neglect under section 300, subdivision (b)(1). Third, that [father] had used drugs in a manner that rendered him incapable of providing regular care to his children under section 300, subdivision (b)(1). And, fourth, that [father] had failed to protect his children from mother's mental health issues by allowing her to reside in the home and have unlimited access to the children.

"The DCFS petition also alleged mother had depression, bipolar disorder, and PTSD and had attempted suicide . . . [and that] her drug use and mental illness placed the children at risk of substantial harm under section 300, subdivision (b)(1).

"Based on this petition and supporting evidence, the juvenile court detained the children in late January 2016. A jurisdictional hearing followed in early February 2016.

"At the jurisdictional hearing, mother recounted nine past incidents of domestic violence at the hands of [father]. The children were present in the home during all nine incidents, but awake during only two of them. [Father] had twice punched mother in the face as she held the infant Cesar. Josiah witnessed domestic violence and saw bruises on mother's body.

"When mother and [father] lived in Ohio, [father] had choked her while she was pregnant with their son Cesar. [Father] was drunk and high on marijuana during this incident. [Father] called police to report a heated argument but denied he was violent. Mother filed a police report alleging [father] had choked her.

"Mother later recanted her statement, resulting in a reduction in charges against [father] from domestic violence to disorderly conduct. [Father] was directed to attend an anger management program, which he completed. In a letter to DCFS in January 2016,

mother wrote that she had lied when she recanted her statement. She explained that she had recanted out of fear that, without [father], she would be unable to support her children.

"[Father] consistently denied committing domestic violence against mother.

"Mother testified that, on seven occasions, she and [father] used methamphetamine together in the bathroom while the children were asleep in another room. [Father] encouraged her drug use by 'put[ting] the pipe toward[s] [her] mouth.' [Father] denied using drugs with mother or coercing her to use drugs.

"Mother claimed [father] used marijuana every day. [Father] disagreed, saying he only used it 'once in a while' for anxiety. He said he was attempting to obtain a medical marijuana card. Mother agreed that [father] was never high on marijuana while in their children's presence, but stated he was present at home while under the influence. [Father] said he only used marijuana outside the home and was never under the influence in the presence of his children.

"Before the [jurisdictional] hearing, both parents expressed their desire that the family stay together. By the time of the . . . hearing, mother had moved back to Ohio for financial reasons. She testified that she did not intend to return to California. Both parents testified they did not intend to resume their romantic relationship. By the time of the jurisdictional hearing, [father] had tested negative for drugs twice. Mother denied having bipolar disorder or PTSD and that she had attempted suicide or ingested a large quantity of pills.

"At the jurisdictional hearing, the juvenile court struck the allegations regarding mother's PTSD, bipolar disorder and attempted suicide. The court found the remaining amended allegations true, and asserted jurisdiction over Josiah and Cesar under section 300, subdivisions (a) and (b)(1).

"By the time of the dispositional hearing, [father] had tested negative for drugs six times. A DCFS investigator testified that [father] told her he had smoked marijuana after the detention hearing and would be 'cleaning his system' so that he could pass a drug test. [Father] denied saying this. [¶] . . . [¶]

"At the dispositional hearing [in April 2016], the court ordered Josiah and Cesar removed from parental custody. . . . The court required [father] to attend parenting classes, individual counseling, anger management and domestic violence programming, as well as to submit to random drug testing."[4] (Slip Opn., case No. B277531, pp. 2-6.)

As noted, father appealed from the jurisdictional and dispositional orders, and we affirmed.

B. *Facts and Proceedings After the Dispositional Order*

In a last minute information for the court and a status report filed for the six-month review hearing, the Department reported that Josiah was diagnosed with autism spectrum disorder, and that Ceasar was diagnosed with seizure disorder.[5] Josiah and Ceasar were placed in separate homes, and father visited with each of them in separate locations each week; all visits were monitored. Each visit was for two hours, and the quality of the visits were deemed to be good, in that the children were excited and contented while in father's presence. The Department also reported that father had completed the recommended 12 weeks of parenting classes, and was continuing to take additional parenting classes, and he had begun anger management and domestic violence classes; however, he had missed five out of 12 drug tests and had not begun individual counseling. Finally, the Department reported that mother and father had violated their no-contact order, and had maintained contact via telephone and social media. The Department noted that the interactions appeared to be volatile and detrimental. It also

---

[4] In the court-ordered case plan filed June 24, 2016, mother and father were ordered not to have contact with each other.

[5] In a "Concurrent Planning Assessment" (CPA) that was attached as an exhibit to the last minute information, it was disclosed that mother and the maternal grandmother both have epilepsy, but doctors had not yet diagnosed Ceasar with that disorder.

noted that father had admitted the contact, and said that he would like to have the no-contact order removed because he was considering getting back together with mother.

At the six-month review hearing on December 21, 2016, the juvenile court ordered mother and father to enroll in conjoint counseling, and ordered that they could visit together once they were in counseling. The court also found that the children's placements were not necessary and appropriate and that reasonable services had not been provided to the parents, but stated that it would reconsider those findings at the next hearing.[6]

At the next hearing, held on January 13, 2017, the Department filed a last minute report for the court in which the Department set forth all of the services that had been provided to mother and father since the new CSW took over the case in September 2016. The Department also informed the court that Ceasar's caregivers, Mr. and Mrs. M., reported that father had not visited or requested a visit in seven weeks, and that he had not called Ceasar in more than two months. Finally, the Department stated that it was seeking options for placing the children together, but that it needed to proceed carefully because both children had special needs. The court reconsidered its prior findings that the children's placement was not necessary and that reasonable services had not been provided, and found that reasonable services had been provided to father (but not to mother) and that the current placement was appropriate.

The Department filed a status review report on March 1, 2017, for the 12-month review hearing to be held on March 21, 2017. In that report, the Department reported that father had completed his parenting classes and was still completing his 52-week domestic violence program, but he had not yet enrolled in individual counseling (and had had only one conjoint counseling session with mother) and had missed three out of four drug tests during the current supervision period. It noted that father had enrolled in the

---

[6] It appears that these findings were based upon the fact that Josiah and Ceasar were placed in separate homes, and on the absence of sufficient information regarding the services that the parents had received in recent months.

domestic violence (and anger management) program on February 9, 2016, and had completed 36 weeks, but father told the CSW that he was having financial difficulty and no longer could afford to pay for the classes, although he was willing to complete the classes as soon as he could afford it. The Department also noted that mother and father had consistently visited both children together since mid-January 2017, and that the visits were good, judging by each child's level of excitement and contentment while in the parents' presence.

Finally, the Department stated in the report that mother and father had expressed concern regarding Mr. and Mrs. M., and that they believed the foster parents were attempting to interfere with their family reunification. Mother and father stated that on several occasions Mr. and Mrs. M. "ridicule[d]" and "bad mouth[ed]" each parent to the other in an effort to cause hostility between them. Father said that he no longer felt comfortable communicating with them because he believed they twisted his words and tried to use them against him. Both mother and father believed that Mr. and Mrs. M. had a personal agenda against them in order to increase their chances of adopting Ceasar. The CSW noted that she "can understand the parents' perspective." She reported that Mr. and Mrs. M. had unexpectedly changed the time and location of the parents' monitored visits, which frustrated the parents, and that Mr. and Mrs. M. had reported numerous, yet insignificant, events regarding mother and father, but no real safety threats were ever identified.

At a hearing held on March 1, 2017 to receive the Department's status review report for the 12-month review hearing, the court ordered the Department to file a last minute information for the court on March 21, 2017, the date of the 12-month review, addressing why Ceasar should not be placed in another home. The court stated, "It sounds to me like, one, the kids need to be placed together in a potential adoptive home; two, the current caretakers are appearing to be an impediment to reunification."

In that last minute information filed on March 21, 2017, the Department explained that Ceasar was placed with Mr. and Mrs. M. on January 25, 2016, when he was four months old, and that it had been his only placement. The Department stated that Ceasar

had developed a strong connection with Mr. and Mrs. M., and that Mr. and Mrs. M. have gone above and beyond to make sure his needs were met. It observed that Ceasar required an increased amount of care and supervision due to his seizure disorder and developmental delay, and that Mr. and Mrs. M. had learned to recognize the physical signs Ceasar exhibits before having a seizure and had developed techniques that decreased the intensity, duration, and frequency of symptoms. The Department also noted that Mr. and Mrs. M. were willing to adopt should reunification fail, and they had an approved home study. The Department concluded it would be detrimental to Ceasar if he were moved to a different placement.

In a second last minute information for the court filed that day, the Department reported that mother had moved back to Ohio after father physically assaulted her on February 23, 2017. According to the police report of the incident, father punched mother in the face; he was arrested and released the following day. The Department also reported that mother told the CSW that she and father had been living in a homeless shelter. Finally, the Department suggested that it would be premature to transition father to unmonitored visits because, in part, father had been very inconsistent in drug testing, having missed seven of 11 scheduled drug tests; the Department stated that father informed the CSW that he missed the tests due to his work schedule, but he had not provided any documentation regarding his employment.

The 12-month review hearing was held, and no changes were made to the court's orders. The matter was continued to July 20, 2017, for the 18-month review hearing.

In the status review report filed for the 18-month review hearing, the Department reported that father had in recent months demonstrated a pattern of threats, intimidation, and controlling behavior toward the CSW, the human services aid (HSA) monitoring some of his visits, Mr. and Mrs. M., and other Department staff. It described an incident in March 2017 and three incidents in May 2017. The conduct included father becoming verbally hostile during a courtesy visit by the CSW, threatening to take or kidnap his children, using profanity in front of the children during monitored visits, threatening to "fuck Mr. M. up" while father was passing by him after a visit, and yelling at and

threatening the CSW monitoring a visit while blocking the CSW and security from access to the child after the CSW terminated the visit due to his inappropriate conduct.

The Department also reported on father's progress with his case plan. It noted that father had missed two out of five scheduled drug tests from February to May 2017, and failed to provide documentation to confirm his assertion that the missed tests were due to his work schedule. The Department noted, however, that there was no indication of any drug use outside of the missed tests.

The Department also noted that father still had not completed his anger management and domestic violence classes due to financial difficulties, and observed that despite having completed 36 of the 52 classes, father had assaulted mother in February 2017 and had engaged in a pattern of controlling and hostile behavior toward Department staff and Mr. and Mrs. M.

The Department further observed that although father had completed parenting classes and typically had been found to be appropriately bonded with his children during visits, he recently had been hostile and inappropriate in front of the children, using profanity, arguing with others, threatening to assault Mr. M., and threatening to kidnap the children. In addition, the Department noted that father had not demonstrated any interest in the children's welfare and interests outside of his visits: he had never participated in either child's Regional Center services despite the CSW's encouragement and willingness to monitor, he did not contact the children on their birthdays, he did not attend Josiah's graduation ceremony, and he had not called to speak with either child in more than six months. Finally, the Department noted that father recently had been participating in weekly therapy sessions. The Department recommended that the juvenile court terminate family reunification services for both parents.

The 18-month review hearing was held on August 15, 2017.

The Department filed a last minute information for the court detailing certain recent incidents involving father. First, father was arrested again on June 28, 2017 for physically assaulting mother. According to the police report, father pinned mother down on the couch and placed his hands around her neck, strangling her until she was able to

kick him off of her. The second incident involved a visit father had with Josiah, during which Josiah's caretaker, Ms. C., said father acted so strangely that Ms. C. no longer was willing to monitor his visits. The last minute information also attached a letter from Mr. and Mrs. M., in which they described threats that father had made. They said that one time father was on the phone when they were approaching him for a visit, and they heard him say he had a "Mack 10." They then heard him say to the person on the phone, "I'll show them[.] I'll kill . . . the[m] all[.]" He was very hostile during that visit, and said he was going to get his boys back and end it all because nothing was worth it and he could not do it anymore. About three days later they got a call from father that appeared to be a mistake. They could hear him talking to someone else, and he threatened to take Ceasar by force from Mrs. M., saying he had nothing left to lose.

At the 18-month review hearing, the court found mother and father were in partial compliance with their case plans and terminated their family reunification services. The court set the section 366.26 permanent plan hearing on December 14, 2017.[7]

A week after the 18-month review hearing, counsel for Ceasar filed a request for a restraining order, seeking to protect Mr. and Mrs. M. from father. The Department also filed a request for a restraining order to protect Annisha T. Wallace, the CSW that had been assigned to the case.

The basis for the restraining order sought by counsel for Ceasar was conduct by father on August 15, 2017, the day of the review hearing. On that day, as father walked by Mr. M. at the courthouse before the hearing he screamed, "Fuck all you and [I] am going to get everyone involved with keeping my kids from me." He continued to vent, then got up from his seat, came over to where Mr. M. was sitting, and made a motion like he was going to hit him. He stopped and screamed, "Fuck you, I am going to kill you, your fat ass wi[f]e, and everyone that is stealing my son from me. You're stealing my

---

[7] Father filed a notice of intent to file a writ petition, but his counsel subsequently filed a letter with this court under *Glen C. v. Superior Court* (2000) 78 Cal.App.4th 570, stating that his office was unable to file a writ petition on father's behalf. We deemed the writ non-operative.

son, I'll kill you." Ten minutes later, father was speaking with his former attorney and said, "That guy [i.e., Mr. M.] is stealing my son and I'll get him and everyone who is involved. I am coming for them. No one is taking my kids from me."

After the hearing, father pointed toward Mr. M. and said, "I am going to get you; you're not getting my son. I am going to kill you and your wife and Ms. Wallace [the CSW] too. I am coming for all of the people trying to take my boys from me. You hear me? I am going to kill all of you." Father then continued to make threats about killing anyone involved in the case.

The Department's request for a restraining order was based upon this same incident, as well as an incident during father's visit with Josiah in May 2017, which the CSW monitored, during which father threatened her and tried to intimidate her physically, and other direct threats father had repeatedly made to kill her and Mr. and Mrs. M. The Department's request also included a more detailed account of the August 15 incident, including threats father made to kidnap the children and kill himself and them, as well as mother's confirmation that father had made the same threat on other occasions.

The court conducted a hearing on the requests on August 22, 2017, granted temporary restraining orders, and set a hearing on the permanent restraining orders on September 15.

The following week, the Department filed a section 388 petition seeking to change the visitation order to terminate father's visitation indefinitely. The request for a change was based upon the August 15 incident and father's previous threats and hostile behavior, as well as an additional incident in which father appears to have followed (and stalked) the mother of another child who was being cared for by Ms. C. (Josiah's caregiver). The juvenile court terminated father's visits on an emergency basis until the hearing on the petition, which the court set for September 15.

On September 15, father was arrested by the Monterey Park Police Department when he walked into the courthouse for the hearings on the restraining orders and section 388 petition. The matter was continued to October 16, 2017.

Father was present in custody at the continued hearing. With regard to the restraining orders. Father's counsel stated that father would not testify due to the pending charges against him, but that father wanted to address the court. After the court noted that father would open himself up to questioning by everyone else if he were to address the court, father withdrew his request. Following argument of all counsel, the court observed that there had been a long period in the middle of the case during which father was very appropriate in court, but he seemed to have regressed to where he was at the beginning of the case in term of anger issues. The court granted the permanent restraining orders, effective through October 15, 2020.

Turning to the section 388 petition, the court found that visits with father would be detrimental to the children, granted the petition, and terminated father's visits.

The court then addressed a request made by father's counsel earlier in the hearing, that the court order the Department to look into the paternal grandparents as a possible placement for both children. Counsel orally provided the paternal grandfather's name and telephone number. The court granted counsel's request and ordered the Department to explore the paternal grandparents as a potential placement and to provide information to the court on December 14, 2017, the date of the section 366.26 hearing. Father filed a notice of appeal from the orders granting the restraining orders and the section 388 petition.

The Department filed its report for the section 366.26 hearing on October 13, 2017. The Department reported that father had not had any visits with the children since August 2017 due to his aggressive behavior and threats. It also reported, among other things, that Mr. and Mrs. M. stated they were willing and able to adopt Ceasar, and that their home study update had been completed.

The section 366.26 hearing was held on December 14, 2017. That day, the Department filed a last minute information for the court stating that the Department had not yet assessed the paternal grandfather for possible placement of the children because the Department had not been provided with any contact information for him, despite repeated requests.

Before beginning the section 366.26 hearing, the court first addressed a section 388 petition father had filed that day, denying it without a hearing.[8] The court proceeded to the permanent plan hearing. The court granted the Department's request that the hearing as to Josiah be continued for further PRU (Placement and Recruitment Unit) efforts. Father's counsel asked that the paternal grandfather be contacted and assessed for possible placement for Josiah; she said she could provide County Counsel with his phone number. Father's counsel also asked that the permanent plan hearing for Ceasar also be continued to allow the Department to assess the paternal grandfather for placement for him. The court denied the request to continue as to Ceasar, and the hearing proceeded.

The court stated that it would consider the entire contents of the case file, with specific reference to the section 366.26 report filed by the Department. Father was the only witness who testified. He testified about his visits with Ceasar, what they did together, how much he loves his son, and how they have bonded. Following argument of counsel, the court found that the return of the child would be detrimental. The court stated it was clear that father loved Ceasar and was committed to him, but it noted that there had been a lot of issues, including anger management, "that have kept us where we're at." The court found that although father had regular and consistent visitation and contact with Ceasar, which conferred some parental role and relationship, his weekly monitored visits did not outweigh the benefit of permanence in adoption for the child. Finding the child adoptable, the court terminated father's parental rights.

Father timely filed a notice of appeal from the order terminating his parental rights. We ordered the appeal from that order consolidated with the earlier appeal from the orders granting the restraining orders and the section 388 petition.

DISCUSSION

---

[8] That petition is not included in the record on appeal, and no issue has been raised regarding its denial.

As noted, father contends on appeal that (1) there was insufficient evidence to support issuance of the restraining orders; (2) the juvenile court abused its discretion in granting the Department's section 388 petition to terminate his visitation; and (3) termination of his parental rights as to Ceasar was improper. We address each contention in turn.

A. *Issuance of the Restraining Orders*

The Welfare and Institutions Code includes two statutes authorizing a juvenile court to issue restraining orders to protect social workers and caregivers: section 213.5 and section 340.5. Section 213.5, subdivision (a), provides that, once a juvenile dependency petition has been filed, the juvenile court may issue an order "enjoining any person from . . . contacting, either directly or indirectly, . . . coming within a specified distance of, or disturbing the peace" of a child's current caretaker or current or former social worker. Section 340.5 provides that a juvenile court "may, for good cause shown and after an ex parte hearing, issue its order restraining the parents of the dependent child from threatening the social worker, or any member of the social worker's family, with physical harm." (§ 340.5, subd. (a).) "Good cause" as used in that section "means at least one threat of physical harm to the social worker, or any member of the social worker's family, made by the person who is to be the subject of the restraining order, with the apparent ability to carry out the threat." (§ 340.5, subd. (b).)

Father contends there was insufficient evidence for the court to issue permanent restraining orders protecting the CSW and Mr. and Mrs. M. "because [father] never threatened CSW Wallace or the caregivers. His threats related to the children and himself only." In making this argument, father cites only to section 340.5, and its requirement that good cause be shown by showing at least one threat of physical harm. Father's argument ignores both section 213.5 and the record.

Unlike section 340.5, section 213.5 does not require a showing that the person to be restrained made a threat of physical harm. Indeed, it does not specify exactly what kind of evidence is required. But courts faced with this issue have determined that the

standard for issuance of a restraining order under section 213.5 is analogous to the standard for issuance of a protective order under Family Code section 6340, which permits the issuance of a protective order under the Domestic Violence Prevention Act if "failure to make [the order] may jeopardize the safety of the [person to be protected]." (Fam. Code, § 6340, subd. (a); see *In re B.S.* (2009) 172 Cal.App.4th 183, 194.) Thus, contrary to father's contention, evidence of threats made was not required for the court to issue the restraining orders.

In any event, the record shows that threats to physically harm both the CSW and Mr. and Mrs. M. *were* made. The requests for restraining orders included evidence that father made numerous threats directly against both Mr. and Mrs. M. and against the CSW at the courthouse on August 15, 2017. He screamed that he was "going to get everyone involved" in keeping his children from him; he told Mr. M. "I am going to kill you, your fat ass wi[f]e, and everyone that is stealing my son from me"; he was overheard telling his former attorney that he would "get" Mr. M. "and everyone who is involved" and that he was "coming for them"; and he pointed at Mr. M. after the hearing and said, "I am going to get you; you're not getting my son. I am going to kill you and your wife and Ms. Wallace [the CSW] too. I am coming for all of the people trying to take my boys from me. You hear me? I am going to kill all of you." This evidence certainly is sufficient for the juvenile court reasonably to find that threats of physical harm to the CSW had been made and that the failure to issue a protective order might jeopardize the physical safety of Mr. and Mrs. M. and the CSW.

B. *Granting the Department's Section 388 Petition*

Section 388 provides in relevant part that "[a]ny parent or other person having an interest in a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstance or new evidence, petition the court . . . for a hearing to change, modify, or set aside any order of court previously made." (§ 388, subd. (a)(1).) The person bringing the petition bears the burden to show both a change of circumstance or new evidence, and that the proposed change would promote the best interests of the child.

(*In re Michael B.* (1992) 8 Cal.App.4th 1698, 1703.) We review the grant or denial of a section 388 petition for an abuse of discretion. (*In re Y.M.* (2012) 207 Cal.App.4th 892.)

Father contends the juvenile court abused its discretion in granting the Department's section 388 petition in this case because his circumstances were changing, not changed, and because it was not in Ceasar's best interest to terminate father's visits. He asserts that the visits had been "regular, positive, and loving," and that although he "had become increasingly agitated with the prolonged nature of the dependency proceeding, he never posed a threat to Ceasar or anyone else." We disagree.

The evidence shows that the circumstances justifying the Department's petition had changed in May 2017, when father became hostile, began to act inappropriately during his monitored visits, and threatened to kidnap his children. The circumstances justifying the petition only became *worse* after that, until August 15, 2017, when father threatened to kill Ceasar's caregivers and the CSW. The fact that the circumstances continued to change for the worse does not mean that the Department failed to meet its burden to show changed circumstances. If the changes shown are sufficient to justify the relief requested, that is enough. In this case, they were sufficient.

Father's assertion that termination of his visits was not in Ceasar's best interest because he was not a threat to Ceasar ignores the evidence that father had, on more than one occasion, threatened to kidnap Ceasar and Josiah and kill them. His assertion also fails to take into account the evidence that father's behavior had become increasingly erratic, hostile, and aggressive. In light of that evidence we cannot conclude that the juvenile court abused its discretion in finding it was in Ceasar's best interest to terminate father's visits.

C. *Termination of Parental Rights*

As noted, father contends the termination of his parental rights was improper for three reasons. First, father argues that the juvenile court failed to use its independent judgment under section 361.3, i.e., the relative placement preference, to evaluate the paternal grandparents for placement of Ceasar before it terminated father's parental

rights. Second, he argues the juvenile court abused its discretion in failing to continue the section 366.26 hearing to allow the Department time to assess the paternal grandfather as a possible placement for Ceasar. Third, he argues the juvenile court erred in finding the beneficial parental relationship exception to termination of parental rights did not apply. None of these arguments prevail.

1. *Failure to Evaluate the Paternal Grandparents for Placement*

"'Section 361.3 gives "preferential consideration" to a relative's request for placement, which means "that the relative seeking placement shall be the first placement to be considered and investigated." (§ 361.3, subd. (c)(1).)' [Citation.] 'When considering whether to place the child with a relative, the juvenile court must apply the [section 361.3] placement factors, and any other relevant factors, and exercise its independent judgment concerning the relative's request for placement.' [Citation.]" (*In re A.K.* (2017) 12 Cal.App.5th 492, 498.)

"The relative placement provisions in section 361.3 apply *when a child is taken from her parents* and placed outside the home pending the determination whether reunification is possible. [Citation.] The relative placement preference also applies to placements made after the dispositional hearing, even when reunification efforts are no longer ongoing, *whenever a child must be moved*. [Citations.] However, the relative placement preference does not apply to an adoptive placement; there is no relative placement preference for adoption. [Citations.] Instead, at the section 366.26 hearing, the court must apply the caretaker preference under section 366.26, subdivision (k)." (*In re A.K.*, *supra*, 12 Cal.App.5th at p. 498, italics added.)

In his appeal, father contends the juvenile court erred by failing to evaluate the paternal grandparents for placement of Ceasar after father requested that they be assessed for placement, and that the error was prejudicial because placement of Ceasar with a relative could have made involuntary termination of his parental rights unnecessary. The Department contends that father forfeited and/or waived the issue and lacks standing to raise it, but in any case, the juvenile court did not err. To the extent father contends the

juvenile court had a sua sponte duty to consider placement of Ceasar with the paternal grandparents at the time the court ordered him removed from his parents' custody at the disposition hearing, he forfeited that issue by failing to raise it in his appeal from the disposition order. We need not determine whether father lacks standing to assert the court erred by failing to consider the paternal grandparents as a possible placement for Ceasar in response to father's request for placement with them, because we conclude the court did not commit any prejudicial error.

As noted, section 361.3 requires the juvenile court to give preferential consideration to placement with a relative who requests it when the child is removed from the physical custody of his or her parents (§ 361.3, subd. (a)) or "whenever a new placement of the child must be made" (§ 361.3, subd. (d)). Here, the request was not made until October 16, 2017 -- 21 months after Ceasar had been removed from his parents' custody -- and there had been no determination that a new placement had to be made. Indeed, the Department had determined several months before the request that a new placement would be detrimental to Ceasar. Thus, the juvenile court was not under a statutory obligation at that time to consider the placement of Ceasar with the paternal grandparents.

Moreover, at the time the request was made, family reunification services had been terminated two months prior, and a section 366.26 hearing was set to take place in two months. Thus, the focus of the dependency proceedings had shifted from father's interest in reunification to Ceasar's interest in permanency and stability. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 223 ["By the time a permanency hearing has been set, the child's private interest in a safe, permanent placement outweighs the parent's interest in preserving a tenuous relationship with the child"].) And in October 2017, Ceasar's interest in permanency and stability with his existing caregivers was strong. First, he was 25 months old and had lived with Mr. and Mrs. M. for 21 months (since his initial detention) and had developed a strong connection with them. Second, he had special needs due to a seizure disorder, and Mr. and Mrs. M. had spent significant time learning how to anticipate Ceasar's seizures and had developed techniques that decreased their

intensity, duration, and frequency. Finally, Mr. and Mrs. M. wanted to adopt Ceasar and had an approved home study. Under these circumstances, we conclude the juvenile court did not commit prejudicial error by declining to consider father's eleventh-hour request to consider placing Ceasar with the paternal grandparents.

2. *Failure to Grant Continuance*

Father argues that the juvenile court abused its discretion by denying his request for a continuance of the section 366.26 hearing because he had shown good cause for the continuance, i.e., the need to allow the Department time to assess the paternal grandparents. We find no abuse of discretion.

At the time of the section 366.26 hearing, Ceasar's dependency case had been pending for almost two years. As discussed in section C.1., *ante*, the focus of the proceedings had shifted from father's interest in reunification to Ceasar's interest in permanency and stability. In light of Ceasar's strong interest in attaining permanency and stability, we find the juvenile court did not abuse its discretion by refusing to delay the section 366.26 hearing for the purpose of assessing a potential caregiver with whom Ceasar had never lived, when Ceasar had lived almost his entire life with caregivers with whom he was closely bonded, who were able and willing to adopt him.

3. *Finding That the Parental Relationship Exception Did Not Apply*

At a section 366.26 permanency planning hearing, the juvenile court determines a permanent plan of care for a dependent child. The court must choose one of several plans, which are set out in the statute in order of preference. (§ 366.26, subd. (b).) The first plan in order of preference is to terminate the rights of the parents and order that the child be placed for adoption. (§ 366.26, subd. (b)(1).) If the court determines that it is likely that the child will be adopted if parental rights are terminated, the court must terminate parental rights and order the child placed for adoption unless one of certain statutory exceptions apply. (§ 366.26, subd. (c)(1).)

"In order to avoid termination of parental rights and adoption, a parent has the burden of proving, by a preponderance of the evidence, that one or more of the statutory exceptions to termination of parental rights set forth in section 366.26, subdivision (c)(1)(A) or (B) apply. . . . The parental benefit exception applies when there is a compelling reason that the termination of parental rights would be detrimental to the child. This exception can only be found when the parents have maintained regular visitation and contact with the child *and* the child would benefit from continuing the relationship. (§ 366.26, subd. (c)(1)(B)(i).)" (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 395.)

"The 'benefit' prong of the [parental benefit] exception requires the parent to prove his or her relationship with the child 'promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.' [Citations.] No matter how loving and frequent the contact, and notwithstanding the existence of an 'emotional bond' with the child, 'the parents must show that they occupy "a parental role" in the child's life.' [Citations.]" (*In re K.P.* (2012) 203 Cal.App.4th 614, 621.)

In this case, the juvenile court found that although father had *some* parental role and relationship with Ceasar by virtue of his weekly monitored visitation with him, it was not sufficient to outweigh the benefits of permanence in adoption for Ceasar. Father argues that the court abused its discretion in coming to this conclusion. We disagree.

There is no doubt that, as the juvenile court noted, father and Ceasar had enjoyable visits and that father had a loving relationship with Ceasar. But there was no evidence in the record (other than father's testimony based upon his own belief) that termination of the parent-child relationship would be detrimental to Ceasar, or that the relationship conferred more benefit to Ceasar than adoption by his long-time caregivers would offer. Thus, we cannot say that the juvenile court abused its discretion in finding that the parental benefit relationship did not apply. (See *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 [parental benefit exception applies only "[i]f severing the natural parent/child

relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed"].)

DISPOSITION

The orders (1) granting permanent restraining orders against father as to Mr. and Mrs. M. and CSW Wallace, (2) granting the Department's section 388 petition and terminating father's visitation, and (3) terminating father's parental rights as to Ceasar are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, Acting P. J.

We concur:

COLLINS, J.

MICON, J.*

*Judge of the Los Angeles County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

*WILLHITE, Acting P. J. COLLINS, J. MICON, J.**

**Judge of the Los Angeles County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.